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Brian Bodmer

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EXAMINER

SHAH, AMEE A

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/920,592             | BODMER ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Amee A. Shah           | 3625                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) 20-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19, 58-61, 64-67 and 73-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 62, 63 and 68-72 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's Amendment, filed March 29, 2006, has been entered. Claims 1 and 10 have been amended. Claims 20-57 have been cancelled. Claims 58-79 have been added.

The amendment filed March 29, 2006, is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: presenting images of third party items *without indicating the items are third party items*. Applicant is required to cancel the new matter in the reply to this Office Action.

Newly submitted claims 62, 63 and 68-72 are directed to invention(s) that are functionally not required by the previous elected invention and would require additional consideration and new searches. The newly submitted inventions are related to the previously elected invention as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, the newly submitted claims 62, 63 and 68-72 have separate utility such as processing orders by either: (a) validating each order, (b) checking the availability of each item, (c) automatically obtaining the image after receiving order, (d) packaging digital copies of images together with graphic images and routing the order to a third party fulfiller, or (e) automatically determining a source of supply for each image. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 62, 63 and 68-72 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Therefore, claims 1-19, 58-61, 64-67 and 73-79 are considered in this action.

The Amended Specification has been entered, but still does not fully comply with the requirement that trademarks be capitalized wherever they appear and accompanied by generic terminology. Therefore, the objection to the Specification remains.

The 35 U.S.C. §112 objection regarding claim 10 is withdrawn in light of the Amendment.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 U.S.C. § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-19, 58-61, 64-67 and 73-79 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

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which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Amended claim 1 and newly submitted claims 58, 67, and 76 contain the new limitation “without indicating the items are third party items.” This limitation is not supported by the Specification. The Specification discusses the retailer routing the order for third party products to the order engine in a manner that is transparent to the customer (Specification, page 12, lines 7-8). “Transparent” is defined as “free from pretense of deceit; easily detected or seen through; readily understood.” (Merriam Webster’s Collegiate Dictionary, 10<sup>th</sup> Ed., 1997.) This indicates that the customer is aware or readily understands that his/her order is for a third party item, which contradicts the newly added claim limitation. Therefore, it is not reasonably conveyed to one skilled in the art that the inventor(s) had possession of the claims invention at the time the application was filed. Because claims 2-19, 59-61, 64-66, 73-75 and 77-79 are dependencies of claims 1, 58, 67 or 76, they inherit the same deficiencies and are rejected on the same bases.

### *Specification*

The use of numerous trademarks, such as KODAK, K-MART, WALGREENS, RITE-AID, MICROSOFT and AMAZON.COM, has been noted in this application. The use of trademarks should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

***Examiner Note***

Examiner cites particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-4, 7, 8, 11, 13, 16, 58-61, 67 and 76-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garfinkle et al., U.S. Patent No. 6,017,157 (hereinafter referred to as "Garfinkle et al.") in view of Kopelman et al., U.S. Pat. App. Pub. No. 2004/0138962 A1 (hereinafter referred to as "Kopelman et al.").**

Referring to claim 1. Garfinkle et al. discloses a method for an e-commerce retailer to display and sell items of a third party comprising:

- identifying one or more items of a third party with a unique identifier (Fig. 4 and col. 4, lines 6-20 – note the unique identifier is the access code, the item is a digital image and the third party is the photographer);
- associating the unique identifier of the item with an image of the item, said image residing on a computer maintained by a third party (Fig. 4 and col. 4, lines 6-23 – “the digital images and associated information are stored in a single directory on a local machine of the photographer or at the scanning center...”);
- presenting at least some of the images of third party items to a user for on-line commerce (Fig. 5 and col. 4, line 57 through col. 5, line 29), said images being retrieved from said computer maintained by a third party (col. 4, lines 24-33 and 57-67 – note the retrieval of images is using the upload interface to transfer data);
- in response to an order request from the user for one or more items, identifying, based at least in part on said unique identifier, each item requested and an appropriate third party for each requested item (Figs. 1 and 5E, and col. 5, lines 19-29, col. 7, lines 16-42 and col. 9, lines 8-41); and
- automatically generating an order for each requested item to be transparently sent to the third party (Fig. 5E and col. 9, lines 14-25).

Garfinkle et al. does not disclose presenting the images of third party items to a user without indicating the items are third party items. Kopelman et al., in the same field of endeavor of selling goods in third parties, discloses a method for facilitating sales of goods by

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independent, third party sellers, including displaying images of the goods on the intermediary's website without indicating the items are third party items (page 2, ¶0028 – note the intermediary is the “marketeer” who may make it appear to the buyer that the good is being offered for sale by the marketeer by not providing the seller's information).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Garfinkle et al. to include the teachings of Kopelman et al. to allow for the display of the images of third party items to a user without indicating the items are third party items. Doing so would allow for the intermediary to determine the best price to sell the good to the user amongst a plurality of third parties after the user expresses an interest in the good, thereby increasing customer satisfaction and/or profit to the intermediary, as suggested by Kopelman et al. (pages 2-3, ¶¶0029-0030).

Referring to claim 2. Garfinkle et al. in view of Kopelman et al. further discloses the method of claim 1 wherein the items include products (Garfinkle et al., col. 5, lines 23-29 – note the products are prints, and merchandise).

Referring to claim 3. Garfinkle et al. in view of Kopelman et al. further discloses the method of claim 1 wherein the items include services (Garfinkle et al., col. 5, lines 19-23 – note the services are emailing and downloading images).



Referring to claim 4. Garfinkle et al. in view of Kopelman et al. further discloses the method of claim 1 wherein the images of items include graphic images (Garfinkle et al., col. 5, lines 16-19 – note the images are thumbnails).

Referring to claim 7. Garfinkle et al. in view of Kopelman et al. further discloses the method of claim 1 wherein a given unique identifier references pricing information from a third party (Garfinkle et al., col. 8, line 38 through col. 9, line 13).

Referring to claim 8. Garfinkle et al. in view of Kopelman et al. further discloses the method of claim 1 wherein a given unique identifier references order fulfillment information (Garfinkle et al., col. 4, lines 60-66 and col. 9, lines 8-32).

Referring to claim 11. Garfinkle et al. in view of Kopelman et al. further discloses the method of claim 1 wherein a particular third party provides photo-finishing services and the images correspond to user photographic images (*see* Garfinkle et al. Abstract).

Referring to claim 13. Garfinkle et al. in view of Kopelman et al. further discloses the method of claim 1 wherein a given third party initially provides smaller thumbnail images of the items and provides larger images in response to user requests (Garfinkle et al., col. 7, lines 4-15).

Referring to claim 16. Garfinkle et al. in view of Kopelman et al. further discloses the method of claim 1 wherein the images are rendered on a Web page for display to the user (Garfinkle et al., col. 6, line 56 through col. 7, line 15 – note the Web page is the HTML page).

Referring to claims 58-61, 67 and 76-79. All of the limitations in apparatus claims 58-61, 67 and 76-79 are closely parallel to the limitations of method claims 1-4, analyzed above and are rejected on the same bases.

**Claims 5, 9, 10, 12, 17, 64 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garfinkle et al. in view of Kopelman et al. and further in view of Baum, Pat. App. Pub. No. US 2002/0065741 A1 (hereinafter referred to as “Baum”).**

Referring to claim 5. Garfinkle et al. in view of Kopelman et al. discloses the method of claim 1, as discussed above, but does not disclose wherein the images of items include descriptive text. Baum, in the same field of endeavor of e-shopping, discloses a method for distributing images to multiple recipients including wherein the images of items include descriptive text (Baum, Fig. 5 and page 8, ¶0080 – note the descriptive text is the number for the images).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Garfinkle et al. in view of Kopelman et al. to include the teachings of Baum to allow for the images of the items to include descriptive text. Doing so would allow a user to better comprehend and identify the image.

Referring to claim 9. Garfinkle et al. in view of Kopelman et al. discloses the method of claim 1, as discussed above, but does not disclose wherein said step of presenting includes: requesting images from a third party; receiving a list of Uniform Resource Locators (URLs) for said requested images; and displaying an on-line page that displays images retrieved from said URLs. Baum, in the same field of endeavor of e-shopping, discloses a method for distributing images to multiple recipients including wherein the step of presenting includes: requesting images from a third party; receiving a list of URLs for said requested images; and displaying an on-line page that displays images retrieved from said URLs (Baum, Fig. 9 and pages 7-8, ¶¶0075 and 0080).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Garfinkle et al. in view of Kopelman et al. to include the teachings of Baum to allow for the step of presenting to include: requesting images from a third party, receiving a list of URLs for said requested images, and displaying an on-line page that displays images retrieved from said URLs. Doing so would allow users to have access to view various images being considered for purchase or re-order from another source, as suggested by Baum (page 7, ¶0075).

Referring to claim 10. Garfinkle et al. in view of Kopelman et al. and further in view of Baum discloses the method of claim 9 including wherein the request for images includes background and formatting information of a particular third party (Baum, page 7, ¶¶0072 and 0075), so that users can consider alterations to the images that may better suit their purposes, as suggested by Baum (page 7, ¶0072).

Referring to claim 12. Garfinkle et al. in view of Kopelman et al. discloses the method of claim 1, as discussed above, but does not disclose wherein a given third party provides Uniform Resource Locators (URLs) for images in various sizes and formats, thereby enabling retrieval and display of images to the user in various sizes and formats. Baum, in the same field of endeavor of e-shopping, discloses a method for distributing images to multiple recipients including wherein a given third party provides URLs for images in various sizes and formats, thereby enabling retrieval and display of images to the user in various sizes and formats (Baum, Figs. 5 and 9, and page 8, ¶¶0080).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Garfinkle et al. in view of Kopelman et al. to include the teachings of Baum to allow for a given third party to provide URLs for images in various sizes and formats, thereby enabling retrieval and display of images to the user in various sizes and formats. Doing so would allow users to have access to view images in various manners to better determine which image to order, as suggested by Baum (page 7, ¶¶0072 and 0075).

Referring to claim 17. Garfinkle et al. in view of Kopelman et al. discloses the method of claim 1, as discussed above, but does not disclose wherein the unique identifier of an item requested by the user is employed for placing a fulfillment request with a corresponding third party. Baum, in the same field of endeavor of e-shopping, discloses a method for distributing images to multiple recipients including wherein the unique identifier of an item requested by the

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user is employed for placing a fulfillment request with a corresponding third party (Baum, page 7, ¶0075 – note the unique identifier is the number used to reorder).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Garfinkle et al. in view of Kopelman et al. to include the teachings of Baum to allow for the unique identifier of an item requested by the user to be employed for placing a fulfillment request with a corresponding third party. Doing so would provide for a more seamless and accurate ordering system, as suggested by Baum (page 7, ¶0075).

Referring to claims 64 and 75. All of the limitations in apparatus claims 64 and 75 are closely parallel to the limitations of method claim 17, analyzed above, and are rejected on the same bases.

**Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garfinkle et al. in view of Kopelman et al. and further in view of Lyons et al. Pat. App. Pub. No. US 2002/0077937 A1 (hereinafter referred to as “Lyons et al.”).**

Referring to claim 6. Garfinkle et al. in view of Kopelman et al. discloses the method of claim 1, as discussed above, but does not disclose wherein a given unique identifier references a corresponding product Stock Keeping Unit (SKU) numbers. Lyons et al., in the same field of endeavor of e-shopping, discloses a method for ensuring availability of inventory for electronic commerce, including wherein a given unique identifier references a corresponding product SKU numbers (Lyons et al., page 3, ¶0026).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Garfinkle et al. in view of Kopelman et al. to include the teachings of Lyons et al. to allow for a given unique identifier to reference a corresponding product SKU number. Doing so would allow the seller to know exactly in which product the buyer is interested and can provide information accordingly, as suggested by Lyons et al. (page 3, ¶0026).

Referring to claim 14. Garfinkle et al. in view of Kopelman et al. discloses the method of claim 1, as discussed above, but does not disclose wherein a given third party evaluates the request for images or descriptions and automatically indicates whether corresponding items are available. Lyons et al., in the same field of endeavor of e-shopping, discloses a method for ensuring availability of inventory for electronic commerce, including wherein a given third party evaluates the request for images or descriptions and automatically indicates whether corresponding items are available (Lyons et al., page 5, ¶¶0045-0046).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Garfinkle et al. in view of Kopelman et al. to include the teachings of Lyons et al. to allow for a given third party to evaluate the request for images or descriptions and automatically indicate whether corresponding items are available. Doing so would provide buyers with confirmation that the desired items are actually available and aid them in the purchase decision, as suggested by Lyons et al. (page 1, ¶0005).

**Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garfinkle et al. in view of Kopelman et al. and further in view of Shmueli et al. Pat. App. Pub. No. US 2002/0143637 A1 (hereinafter referred to as “Shmueli et al.”).**

Referring to claim 15. Garfinkle et al. in view of Kopelman et al. discloses the method of claim 1, as discussed above, but does not disclose wherein the unique identifier associated with a given item is stored in a user's shopping cart when the user selects the item. Shmueli et al., in the same field of endeavor of e-shopping, discloses a portable shopping cart wherein the unique identifier associated with a given item is stored in a user's shopping cart when the user selects the item (Shmueli et al., page 6, ¶0066).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Garfinkle et al. in view of Kopelman et al. to include the teachings of Shmueli et al. to allow for the unique identifier associated with a given item to be stored in a user's shopping cart when the user selects the item. Doing so would provide for a more seamless and efficient transaction in ensuring that the item desired can be held in a virtual shopping cart before the buyer must make a final determination whether or not to buy the item.

**Claims 18, 19, 65, 66, 73 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garfinkle et al. in view of Kopelman et al. and further in view of Johnson et al., U.S. Pat. No. 6,505,172 B1 (hereinafter referred to as “Johnson et al.”).**

Referring to claims 18-19. Garfinkle et al. in view of Kopelman et al. discloses the method of claim 1, as discussed above, but does not disclose the method further comprising automatically splitting an order including individual order items from more than one third party,

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and assigning fulfillment of individual order items to the appropriate third parties (claim 18), nor splitting order including items from the retailer and items from one or more third parties amongst the retailer and the appropriate third parties (claim 19). Johnson et al., in the same field of endeavor of e-shopping, discloses a method for electronic sourcing of items including automatically splitting an order including individual order items from more than one third party, and assigning fulfillment of individual order items to the appropriate third parties, and splitting an order including items from the retailer and items from one or more third parties amongst the retailer and the appropriate third parties (Johnson et al., col. 15, line 39 through col. 16, line 15).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Garfinkle et al. in view of Kopelman et al. to include the teachings of Johnson et al. to allow automatically splitting an order including individual order items from more than one third party, and assigning fulfillment of individual order items to the appropriate third parties, and splitting an order including items from the retailer and items from one or more third parties amongst the retailer and the appropriate third parties. Doing so would allow buyers to purchase from multiple vendors at one session, as suggested by Johnson et al. (col. 2, lines 8-22).

Referring to claims 65, 66, 73 and 74. All of the limitations in apparatus claims 65, 66, 73 and 74 are closely parallel to the limitations of method claims 18 and 19, analyzed above, and are rejected on the same bases.



***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Holden et al., U.S. Pat. App. Pub. No. 2002/0002579 A1, discloses a system and method for facilitating and managing relationships between and among companies and service providers through a web site to provide suppliers with "one-stop" to locate and buy services (*see* entire document).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ameer A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogesh Garg can be reached on 571-272-6756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AAS

April 28, 2006

  
J. C. GARG  
Primary Ex.